

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-521

LESLIE SPERRY,

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES,

APPELLEE

Opinion Delivered SEPTEMBER 24, 2008

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT,
[NO. JV-07-131]

HONORABLE ROBERT EDWARDS,
JUDGE,

AFFIRMED

SAM BIRD, Judge

Appellant Leslie Sperry brings this appeal from the order of the White County Circuit Court terminating her parental rights to her sons, C.S., born May 15, 1996, and S.S., born July 22, 2000. She argues that the circuit court erred in finding that there was sufficient evidence to support termination of her parental rights, both as to whether the termination is in the children's best interest and as to grounds for termination. We disagree and, therefore, affirm the circuit court.

This case began on June 12, 2007, when the Department of Human Services (DHS) made a routine, random home visit to Sperry's home as part of a protective services case opened in April 2007. According to the affidavit filed in support of DHS's petition for emergency custody, the smell of marijuana was strong and the DHS worker called the police for assistance. The children were home with a babysitter, who admitted to smoking

marijuana. Sperry, who was not at home, was informed that a seventy-two-hour hold was being taken on her children. Sperry's husband tested positive for methamphetamine and cocaine. Sperry tested negative for all illegal substances. An order for emergency custody was entered on June 15, 2007. The court later found probable cause for the removal of the children.

At the August 23, 2007, adjudication hearing, the parties stipulated to a finding that the children were dependent-neglected as alleged. The goal was set as reunification. Sperry's visits were to be at the discretion of DHS. She was ordered to cooperate with DHS and follow the case plan; to not use or possess controlled substances; to submit to random drug screens; to obtain a drug assessment and follow the recommendations; and to keep CASA, DHS, and her attorney informed of her contact information.

At a November 16, 2007, permanency-planning hearing, the court maintained the goal as reunification but noted that DHS would be filing a petition for termination of parental rights. The court also found that the parents had not complied with the case plan and court orders. Specifically, the court found that Sperry had inadequate and unstable housing, had not submitted to a drug assessment, and had not attended drug rehabilitation or AA/NA meetings. DHS was found to have made reasonable efforts to provide services to the family. Those services included foster care, various referrals, home visits, visitation, and transportation assistance.

On December 7, 2007, DHS filed a petition to terminate parental rights. The department's petition set forth two grounds for termination including that the children had

been adjudicated dependent-neglected and had continued out of the home for more than twelve months, and that, despite meaningful effort by DHS to correct the conditions which caused removal, the conditions had not been remedied.

On January 24, 2008, the termination hearing was held. Kay Higginbotham, the DHS case manager, testified that the department had an earlier case involving this family in 2006. The earlier case involved environmental neglect and drug use by the parents, resulting in a finding that the children were dependent-neglected. The earlier case was closed when the children were returned to the parents in January 2007. Higginbotham recommended that the parental rights of both parents be terminated because there had been no progress in rectifying the problems facing the family, such as the drug issues, the lack of stable employment, and the housing and environmental issues. She said that the children deserved permanency.

Higginbotham testified that Sperry tested positive for marijuana in August 2007, adding that Sperry had admitted to using drugs since the age of eighteen. She said that a drug test on the day of the termination hearing indicated a possible positive test for marijuana for Sperry.¹ She testified that neither parent had completed a drug assessment. Although there were environmental issues such as the dirty home, the lack of running water, and unfinished rooms or rooms without floors to be addressed, Higginbotham was more concerned with the drug issues. She added that the environmental issues would not necessarily warrant termination if there were no other concerns. She said that she never offered to have DHS assist with the repairs to Sperry's home because Sperry had told her several times that she was

¹Further testing determined that this was a "false" positive result.

going to make the repairs and had the materials to do so. She also said that Sperry was referred for housing assistance, based on her income.

She also testified that neither parent had been employed for more than two or three months at a time. She said that, as of the November 2007 staffing, Sperry was working sporadically for a temporary employment service. According to Higginbotham, Sperry would have no problem with maintaining employment.

Higginbotham said that Sperry was also provided with parenting classes, which she completed, transportation assistance, food stamps, and visitation. Higginbotham said that Sperry could have received utility assistance but that she did not make such referrals. She did not seek a voucher to pay for Sperry's water bill when it had been shut off because Sperry told her that she would have the funds by the end of the week. She added that, had the parents complied with the case plan, it would not have been an issue to have water or utilities. Higginbotham said that neither parent asked for additional services such as utility assistance, housing referrals, or in getting the home repaired.

Emily Hudkins, an investigator for DHS, testified that she was involved in the original case involving the Sperry family. She said that the case was originally opened because of environmental issues but that, later, the drug issues emerged. She said that the first case was successful in reuniting the family and that she did not believe that the environmental issues were as great in the second case as they had been in the first case.

Glen Shipman, the CASA volunteer on the case, recommended that parental rights be terminated. He testified that he had some concern about whether it would be better for

Sperry to attempt to raise the children as a single parent. He also acknowledged that much needed to be done before that could happen. Shipman was convinced that the parents could not properly care for the children if they remained together.

Leslie Sperry testified that she was living in a home owned by her parents. She said that she was employed by a temporary service but that there was no work currently available for her. She added that she was making job applications. She said that her father was supporting her by paying her bills. She asserted that she and her husband were separated and that she did not need support from him. According to Sperry, the separation was necessary so that she could be reunited with her sons. She denied having a drug problem and said that the last time she used drugs was August 2007. She also explained that she completed two drug assessments but that the DHS caseworker did not have a copy of them.

Sperry asserted that the home was suitable because the bathroom floor had been replaced and the clutter cleaned. She said that further work was needed. She said that her water still had not been turned on because she had not asked her father for the funds because "he helps me enough." Sperry did not believe that DHS had offered her as much help as it should to reunify her family.

On examination by the court, Sperry said that, once the earlier case had been closed and the children returned, she assumed her husband was not using drugs. She explained that she was the godmother of the babysitter and was not aware that the babysitter would smoke marijuana around the children. She said that the only excuse for her using marijuana in August 2007 was that DHS told her that, even though she was not using drugs, she would not regain

custody of the children while married to her husband.

The circuit court ruled from the bench and found that DHS had provided clear and convincing evidence that it was in the children's best interest to have parental rights terminated. The court noted that the children had been in foster care for eighteen of the preceding twenty-four months. The court also found that most of the family's problems were caused by Mr. Sperry's drug use and that Leslie Sperry had only recently come to realize that she needed to distance herself from Mr. Sperry. The court doubted that Sperry could distance herself from her husband for very long, calling her "co-dependent." The court's written order was entered on February 20, 2008. This appeal followed.

We review termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006).

Sperry contends that the circuit court erred in finding sufficient evidence to support

the termination of her parental rights. She divides her argument into several parts. She first argues that the court erred in finding that the children would be at risk of potential harm if they were returned to Sperry's custody. The plain language of section 9-27-341 provides that the court must find by clear and convincing evidence that termination is in the children's best interests, *giving consideration* to the risk of potential harm. *Carroll v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). The risk of potential harm is but a factor for the court to consider in its analysis. *Id.* There is no requirement that every factor considered be established by clear and convincing evidence; rather, after consideration of all factors, the evidence must be clear and convincing that the termination is in the best interest of the child. *McFarland v. Arkansas Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Furthermore, the supreme court has directed that the harm analysis be conducted in broad terms, including the harm the child suffers from the lack of stability in a permanent home. *See Bearden v. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). She concedes that the children were adoptable. Therefore, the question becomes whether there is potential harm to the children from maintaining contact with Sperry.

Sperry's failure to secure safe and appropriate housing or stable income is contrary to the children's well-being and best interest. *Carroll, supra*. There was testimony that there had been essentially no progress made since the children first came to DHS's attention in 2005. This lack of stability also shows potential harm to the children. *Bearden, supra*. Based on this testimony, we can not say that the circuit court was clearly erroneous in finding that the children would face potential harm if they were returned to Sperry's custody.

Sperry next argues that there is insufficient evidence to support the circuit court's finding of grounds for termination. Specifically, she argues that the ground found by the court, that the children had resided out of the home for more than twelve months and the conditions causing removal have not been remedied, cannot be used because the children were only out of the home for a period of seven months, from June 12, 2007, until the termination hearing on January 24, 2008. She argues that the prior case cannot be considered. We have previously decided the question adversely to Sperry and held that there is no requirement that the twelve-month period be consecutive or in the same case. *Johnson v. Arkansas Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002); *see also* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(b) (Repl. 2008).

Sperry also contends that DHS did not make reasonable efforts to provide services because it did not make referrals to help Sperry find employment or to repair the home. There was testimony that Sperry was provided with services, including parenting classes, transportation assistance, food stamps, and visitation. There were explanations as to why certain other services or referrals were not provided. We cannot say that the circuit court clearly erred in finding that DHS made reasonable efforts to provide Sperry and her family with reunification services.

Sperry's argument is essentially a plea for more time to improve her situation because she had only just recently separated from her husband and that it was his drug use that created most of the problems for the family. Sperry's two children were in foster care for over eighteen of the twenty-four months before her parental rights were terminated. During that

time, DHS provided Sperry with various services aimed at reunification of the family. DHS allowed Sperry significant time to obtain suitable housing and demonstrate that she could properly keep and maintain that housing, and also required Sperry to find suitable employment and prove that she could provide adequate income for both herself and the two children. While DHS admits that Sperry regularly visited the children and did complete her parenting classes, she failed to complete those other stated requirements and, accordingly, failed to show that she was capable of caring for her children. *See Wright v. Arkansas Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003).

Affirmed.

GLADWIN and ROBBINS, JJ., agree.